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Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability
company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1-50, inclusive,

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond
Swope, Dept. 23

**DECLARATION OF ZACHARY G. F.
ABRAHAMSON IN SUPPORT OF
DEFENDANT FACEBOOK, INC.'S EX
PARTE APPLICATION FOR AN ORDER
SHORTENING TIME FOR DEPOSITIONS**

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015

TRIAL DATE: April 25, 2019

FILED
SAN MATEO COUNTY

APR 11 2019

Clerk of the Superior Court

CLERK

CIV533328
DIS
Declaration in Support
1762389



RECEIVED
APR 11 2019
SUPERIOR COURT
CNIL DIVISION

1 I, Zachary G. F. Abrahamson, hereby declares as follow:

2 1. I am an attorney at law licensed to practice in the State of California. I am counsel of
3 record in this matter for Defendant Facebook, Inc. ("Facebook"). I make this Declaration from personal
4 knowledge, and if called to testify, I could and would testify competently thereto.

5 2. Attached hereto as **Exhibit 1** is a true and correct copy of an April 9, 2019 e-mail from a
6 broadcast network to Facebook.

7 3. Attached hereto as **Exhibit 2** is a true and correct copy of an April 10, 2019 e-mail from a
8 broadcast network to Facebook.

9 4. Attached hereto as **Exhibit 3** is a list of third-party e-mail domains with which Six4Three
10 or its legal team are known to have corresponded, based on a review of documents produced by
11 Birnbaum & Godkin, LLP and Gross & Klein LLP.

12 5. Within days of the Court's March 15 order authorizing discovery, Facebook served
13 document requests on Six4Three—seeking the documents of party-witness Ted Kramer—and served
14 subpoenas on Mr. Godkin and Mr. Gross.

15 6. Attached hereto as **Exhibit 4** is a true and correct copy of David Godkin's Objection to
16 Subpoena *Ad Testificandum*, served April 2, 2019.

17 7. Attached hereto as **Exhibit 5** is a true and correct copy of David Godkin's Objection to
18 Subpoena *Duces Tecum*, served April 2, 2019.

19 8. Attached hereto as **Exhibit 6** is a true and correct copy of the Objections and Responses
20 of Stuart G. Gross to Facebook's Deposition for Personal Appearance and Production of Documents and
21 Things, served April 3, 2019.

22 9. Attached hereto as **Exhibit 7** is a true and correct copy of an April 10, 2019 e-mail from
23 Donald Sullivan to Zachary Abrahamson and others.

24 10. Attached hereto as **Exhibit 8** is a true and correct copy of an April 10, 2019 e-mail from
25 Catherine Kim to Steven Bolotin and others.

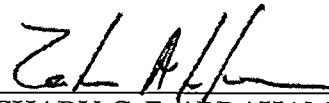
26 11. Attached hereto as **Exhibit 9** is a true and correct copy of a March 23, 2019 e-mail from
27 Serving By Irving, Inc. to Catherine Kim and others.
28

1 12. Attached hereto as **Exhibit 10** is a true and correct copy of a March 23, 2019 e-mail from
2 Serving By Irving, Inc. to Catherine Kim and others.

3 13. Attached hereto as **Exhibit 11** is a true and correct copy of correspondence dated April 5,
4 2019, from Jack Russo to Catherine Kim.

5 14. Facebook has now attempted service of a deposition subpoena on Thomas Scaramellino
6 three times at two addresses, to no avail.

7 I declare under the penalty of perjury under the laws of the State of California that the foregoing
8 is true and correct. Executed on this 11th day of April, 2019.

9
10 

11 _____
ZACHARY G. F. ABRAHAMSON

PROOF OF SERVICE

I am employed in San Francisco County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

On April 11, 2019, I served the following documents in the manner described below:

**DECLARATION OF ZACHARY G. F. ABRAHAMSON IN SUPPORT OF
DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR AN ORDER
SHORTENING TIME FOR DEPOSITIONS**

☒ **BY ELECTRONIC SERVICE:** By electronically mailing a true and correct copy through Durie Tangri's electronic mail system from zabrahamson@durietangri.com to the email addresses set forth below.

On the following part(ies) in this action:

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San Francisco, CA 94111
sgross@grosskleinlaw.com

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James Kruzer
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Scaramellino (individual capacities)*

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JLeveroni@MPBF.com

Attorney for Birnbaum & Godkin, LLP

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct. Executed on April 11, 2019, at San Francisco, California.

3 
4 _____
5 ZACHARY G. F. ABRAHAMSON
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**Redacted Version of
EXHIBIT 1
Conditionally filed
Under Seal in its
Entirety**

**Redacted Version of
EXHIBIT 2
Conditionally filed
Under Seal in its
Entirety**

EXHIBIT 3

The data range would be for documents created or modified between January 1, 2017 through present.

All of the search terms listed below are intended to encompass all text strings that include these terms, including text strings that include text before and after the terms below. For example, "guardian" includes, without limitation, www.guardian.co.uk.

Media Entities

- guardian
- observer
- wsj OR "wall street journal"
- seetharaman
- "kirsten grind" OR "kirsten.grind"
- cnn
- bbc
- "new york times" OR nyt OR nytimes
- "washington post" OR wapo OR "wash post" OR washpost OR washingtonpost
- "associated press" OR ap.org
- msnbc
- nbc
- cbs
- fox
- buzzfeed OR "buzz feed"
- wired
- "ars technica" OR arstechnica
- fortune

- verge
- mashable
- telegraph
- “business insider” OR businessinsider
- cadwalladr OR carole
- bloomberg
- techradar
- koppelman
- Francetv.fr
- huffpost.com
- law360.com
- lawandcrime.com
- mailonline.com
- mlex.com
- newyorker.com
- politico.eu
- politico.com
- recode.net
- revealnews.org
- theinformation.com
- thesun.co.uk
- thomsonreuters.com
- vice.com
- “daniel bates” or “daniel g. bates”

Governmental Entities

- “attorney general” OR (ag AND California) OR “ag.ca.gov” or “doj.ca.gov”
- “federal trade commission” OR ftc
- congress OR senat! OR “house of representatives”
- dcms OR (digital AND culture AND media AND sport)
- parliament
- collins
- challenger
- willows

EXHIBIT 4

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

SUFFOLK, ss.

CIVIL ACTION NO. 1984CV00910-F

FACEBOOK, INC., a Delaware corporation,
Petitioner,

v.

DAVID GODKIN,
Respondent.

OBJECTION TO SUBPOENA AD TESTIFICANDUM

Now comes David Godkin ("Godkin"), by and through his counsel, and hereby objects to the Subpoena *Ad Testificandum* ("Subpoena for Testimony") issued by counsel for defendant Facebook, Inc. ("Facebook").

The action upon which this Subpoena for Testimony was issued is a civil litigation matter pending in the Superior Court of San Mateo County, California (the "Action"). In the Action, the defendant, Facebook, previously sought to conduct a testamentary deposition of, among others, David Godkin. Mr. Godkin is counsel of record for the plaintiff in the Action, and his motion to be relieved as counsel of record is pending. The Superior Court of San Mateo County, California denied Facebook's request. Facebook has recently renewed such request before the Court in the Action. The Court again refused to order such deposition. Order of Judge Swope, 3/15/19. Instead, the judge expressly stated "The requests to compel depositions are premature ... Scheduling of depositions are contingent on production, which shall be the subject of a further discovery conference..." Hearing Transcript, 13:18-19.

Notwithstanding the Orders and statements of the Court in the Action, Massachusetts counsel for Facebook filed an *ex parte* application in the Massachusetts Superior Court seeking leave to issue a subpoena for deposition testimony from Mr. Godkin. Nowhere in that application did Massachusetts Counsel for Facebook advise the Court that the California Superior Court had expressly rejected such a deposition. Subsequently Massachusetts Counsel for Facebook issued this subpoena noticing a testamentary deposition of Mr. Godkin.

As the subpoena for a testamentary deposition is in contravention of existing Court orders, it is improper and a nullity. Accordingly, Mr. Godkin objects to such subpoena and will not appear for oral testimony.

In addition, a motion to stay discovery pending appeal in the Action is currently pending before the Court in the Action.

Mr. Godkin expressly preserves all additional applicable objections to the Subpoena pursuant to Massachusetts and California law, including (without limitation) objections based on the attorney-client privilege, work product privilege, and all other applicable privileges.

DAVID GODKIN
By His Attorneys,

/s/ Steven J. Bolotin

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MORRISON MAHONEY LLP
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Phone: 617-439-7500

CERTIFICATE OF SERVICE

I, hereby certify that a true and accurate copy of the foregoing was served upon the following counsel of record, via electronic mail, on the date below:

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Attorney for Facebook, Inc.

Dated: April 2, 2019

/s/ Steven J. Bolotin

Steven J. Bolotin

EXHIBIT 5

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

SUFFOLK, ss.

CIVIL ACTION NO. 1984CV00910-F

FACEBOOK, INC., a Delaware corporation,
Petitioner,

v.

DAVID GODKIN,
Respondent.

OBJECTION TO SUBPOENA DUCES TECUM

Now comes David Godkin ("Godkin"), by and through his counsel, and hereby objects to the Subpoena *Duces Tecum* ("Document Subpoena") issued by counsel for defendant Facebook, Inc. ("Facebook").

GENERAL OBJECTIONS

The action upon which this Document Subpoena was issued is a civil litigation matter pending in the Superior Court of San Mateo County, California (the "Action"). Godkin objects generally to the Document Subpoena issued by Facebook as currently pending in the Action is a Motion to Stay all such discovery. As the Document Subpoena seeks production of privileged communications, such production prior to a ruling by the Court is inappropriate.

Godkin further objects generally to the Document Subpoena issued by Facebook in that subject to a ruling by the Superior Court, a writ will be filed in the California Court of Appeals seeking review of the orders in the Action allowing for discovery of Godkin. As the Document

Subpoena seeks production of privileged communications, such production prior to a ruling by the Appeals Court is inappropriate.

Subject to these General Objections, Godkin objects specifically as follows:

Request for Production No. 1

DOCUMENTS (e.g. phone logs) sufficient to show ALL telephonic and/or video conference COMMUNICATIONS between SIX4THREE, INCLUDING, without limitation Theodore Kramer, Thomas Scaramellino, David Godkin, James Kruzer, Stuart Gross, and ANY other agent or representative of SIX4THREE, and ANY individual or entity REGARDING the Individual Defendants' Special Motion to Strike and for Attorney's Fees and Costs Pursuant to C.C.P. § 425.16 (anti-SLAPP) ("Individual Defendants' anti-SLAPP MOTION"), Six4Three's Memorandum of Points and Authorities in Opposition to Defendants' Special Motions to Strike (anti-SLAPP) ("Six4Three's anti-SLAPP Opposition"), the Declaration of David S. Godkin in Opposition to Defendants' Special Motion to Strike (anti-SLAPP) ("Godkin Declaration") or exhibits thereto, or other FACEBOOK confidential or highly confidential information. For the avoidance of doubt, this includes but is not limited to media organizations and governmental entities, INCLUDING, the Digital, Culture, Media and Sport Committee of the House of Commons ("DCMS Committee").

Objection to Request for Production No. 1

Godkin objects to this request in that it is vague (not defining who Facebook considers to be "agents" or "representatives" of Six4Three, and not defining what Facebook considers to be a "phone log"), overly broad (seeking materials unrelated to the disclosure of confidential Facebook information and therefore beyond the scope of the California Superior Court's orders), unduly burdensome (as it requires Godkin to provide materials which are not in his care, custody,

or control)), and seeks to infringe on the attorney client privilege and work product doctrine. Further, Godkin objects to this request on the ground that it is unlimited by time frame and is therefore overly broad and unduly burdensome.

Request for Production No. 2

ALL COMMUNICATIONS between SIX4THREE, INCLUDING without limitation Theodore Kramer, Thomas Scaramellino, David Godkin, James Kruzer, Stuart Gross, and ANY other agent or representative of SIX4THREE, and ANY third party individual or entity REGARDING the Individual Defendants' anti-SLAPP motion, Six4Three's anti-SLAPP Opposition, the Godkin Declaration or exhibits thereto, or other FACEBOOK confidential or highly confidential information. For the avoidance of doubt, this includes but is not limited to media organizations and governmental entities, INCLUDING the DCMS Committee.

Objection to Request for Production No. 2

Godkin objects to this request in that it is vague (not defining who Facebook considers to be "agents" or "representative" of Six4Three), overly broad (seeking materials unrelated to the disclosure of confidential Facebook information and therefore beyond the scope of the California Superior Court's orders), unduly burdensome (as it requires Godkin to provide materials which are not in his care, custody, or control), and seeks to infringe on the attorney client privilege and work product doctrine. Godkin objects to this request on the ground that it is unlimited by time frame and is therefore overly broad and unduly burdensome. Further, all non-privileged responsive documents in Godkin's care, custody, or control have previously been produced.

Request for Production No. 3

DOCUMENTS sufficient to show the identity of ALL individuals or entities with whom Theodore Kramer, Thomas Scaramellino, David Godkin, James Kruzer, and Stuart Gross, or ANY other agent or representative of SIX4THREE, discussed the Individual Defendants' anti-SLAPP motion, Six4Three's anti-SLAPP Opposition, the Godkin Declaration or exhibits thereto, or other FACEBOOK confidential or highly confidential information.

Objection to Request for Production No. 3

Godkin objects to this request in that it is vague (not defining who Facebook considers to be "agents" or "representatives" of Six4Three), overly broad (seeking materials unrelated to the disclosure of confidential Facebook information and therefore beyond the scope of the California Superior Court's orders), unduly burdensome (as it requires Godkin to provide materials which are not in his care, custody, or control), and seeks to infringe on the attorney client privilege and work product doctrine. Godkin objects to this request on the ground that it is unlimited by time frame and is therefore overly broad and unduly burdensome.

Request for Production No. 4

ALL emails and attachments exchanged between Mr. Kramer and Damian Collins, or ANY member or employee of the DCMS Committee of the U.K. Parliament.

Objection to Request for Production No. 4

Godkin objects to this request in that it is vague (not defining who Facebook considers to be "agents" or "representatives" of Six4Three), overly broad (seeking materials unrelated to the disclosure of confidential Facebook information and therefore beyond the scope of the California Superior Court's orders), unduly burdensome (as it requires Godkin to provide materials which

are not in his care, custody, or control), and seeks to infringe on the attorney client privilege and work product doctrine. Godkin objects to this request on the ground that it is unlimited by time frame and is therefore overly broad and unduly burdensome. Further, all non-privileged responsive documents in Godkin's care, custody, or control have previously been produced.

Request for Production No. 5

ALL logs or other records pertaining to the SIX4THREE Dropbox account that Mr. Kramer accessed from his laptop, INCLUDING ALL, available or recoverable information about what DOCUMENTS were uploaded to the account and by whom, what DOCUMENTS were downloaded from the account and by whom, what DOCUMENTS were deleted from the account and by whom, when the account was cached or synched locally and on what devices, and ALL individuals that had access to the account and when.

Objection to Request for Production No. 5

Godkin objects to this request in that it is overly broad (seeking materials unrelated to the disclosure of confidential Facebook information and therefore beyond the scope of the Court's orders), unduly burdensome (as it requires Godkin to provide materials which are not in his care, custody, or control), and seeks to infringe on the attorney client privilege and work product doctrine.

Request for Production No. 6

All emails or other COMMUNICATIONS amongst and between Mr. Gross or anyone at Gross & Klein, Mr. Godkin or anyone at Birnbaum & Godkin, Mr. Kramer, Mr. Scaramellino, or ANY other agent, attorney, or individual associated with SIX4THREE from May 1, 2018 to the present REGARDING the Individual Defendants' anti-SLAPP motion, Six4Three's anti-SLAPP

Opposition, the Godkin Declaration or exhibits thereto, or other FACEBOOK confidential or high confidential information. For avoidance of doubt, this includes but is not limited to COMMUNICATIONS RELATING TO contacts with the DCMS Committee, *The Guardian*, *The Observer*, or other third parties.

Objection to Request for Production No. 6

Godkin objects to this request in that it is vague (not defining who Facebook considers to be “agents” of or “individual associated” with Six4Three), overly broad (seeking materials unrelated to the disclosure of confidential Facebook information and therefore beyond the scope of the Court’s orders), unduly burdensome (as it requires Godkin to provide materials which are not in his care, custody, or control), and seeks to infringe on the attorney client privilege and work product doctrine.

DAVID GODKIN
By His Attorneys,

/s/ Steven J. Bolotin

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CERTIFICATE OF SERVICE

I, hereby certify that a true and accurate copy of the foregoing was served upon the following counsel of record, via electronic mail, on the date below:

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Attorney for Facebook, Inc.

Dated: April 2, 2019

/s/ Steven J. Bolotin

Steven J. Bolotin

EXHIBIT 6

Donald P. Sullivan (SBN 191080)
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**WILSON, ELSE, MOSKOWITZ,
EDELMAN & DICKER LLP**

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Attorneys for Plaintiff's Counsel
STUART GROSS and GROSS & KLEIN LLP

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO**

SIX4THREE, LLC.,

Plaintiff,

v.

FACEBOOK, INC., a Delaware
Corporation; MARK ZUCKERBERG, an
individual; CHRISTOPHER COX, an
individual; SAMUEL LESSIN, an
individual; MICHAEL VERMAL, an
individual; ILYA SUKHAR, an
individual; and DOES 1-50, inclusive,

Defendants.

Case No.: CIV533328

**OBJECTIONS AND RESPONSES OF
STUART G. GROSS TO FACEBOOK'S
DEPOSITION FOR PERSONAL
APPEARANCE AND PRODUCTION OF
DOCUMENTS AND THINGS**

Responding Party has not fully completed his investigation of the facts relating to this matter. All the answers contained herein are based upon such information and documents which are presently available and specifically known to Responding Party and disclose only those contentions which presently occur to such Responding Party. It is anticipated that further discovery, independent investigation, legal research and analysis will supply additional facts, add meaning to the known facts, as well as establish entirely new factual conclusions and legal contentions, all of which may lead to substantial additions, changes in and variations from the contentions herein set forth. The following responses to the notice of deposition and requests for production of documents are given without prejudice to Responding Party's right to produce evidence of any subsequently discovered fact or facts which Responding Party may later recall.

1 Responding Party accordingly reserves the right to change any and all answers herein as
2 additional facts are ascertained, analyses are made, legal research is completed and contentions
3 are made.

4 The answers contained herein are made in a good faith effort to supply as much factual
5 information and as much specification of legal contentions as is presently known but should in
6 no way be in prejudice of Responding Party in relation to further discovery, research and
7 analysis.

8 **I. OBJECTION BASED ON CONFLICT OF INTEREST**

9 Responding Party objects on the ground and to the extent that complying with the terms
10 of the Subpoena would force him to disobey the express instructions of Six4Three, LLC, who
11 remains his client in this action.

12 **II. OBJECTIONS TO FORM OF SUBPOENA**

13 **A. IMPROPER INCLUSION OF DIFFERENT DATES AND LOCATIONS**
14 **FOR PRODUCTION AND DEPOSITION**

15 Responding Party objects on the ground that the Subpoena improperly purports to
16 establish a different date for production of documents than for deposition. Responding party
17 objects on the ground that the Subpoena improperly purports to establish a place for production
18 of documents than for deposition. In order to set a different date and place for production of
19 documents than for a deposition, two subpoenas must be served: a deposition subpoena for
20 production of business records under CCP §§ 2020.410 *et seq.* and a deposition subpoena for
21 personal appearance and production of documents and things under CCP 2020.501. Facebook
22 served only the latter. Accordingly, the purported establish of April 2, 2019 and Aptus as the
23 date and location for production of documents is void and without legal effect. Responding
24 Party accordingly disregards this portion of the Subpoena and interprets it to request production
25 of documents on May 3, 2019 at the office of Facebook's counsel.

26 **B. FAILURE TO COMPLY WITH CONSUMER NOTICE PROVISION**

27 Responding Party further objects on the ground that the document requests are personal
28 records pertaining to a consumer and Facebook has failed to include with the deposition a copy

1 of the proof of service of the notice to the consumer or the consumer's written authorization to
2 release personal records.

3 **C. OTHER FAILURES TO COMPLY WITH CCP §§ 2020.410, *et seq.***

4 Responding party further objects on the ground that the Subpoena, to the extent that it
5 purports to require production of records without deposition fails to comply with the
6 requirements of CCP §§ 2020.410, *et seq.* These failures include, without limitation: setting a
7 date for production that is 11 days after the date of the Subpoena's service and that is 13 days
8 after the date of its issuance. *See* CCP § 2020.410(c); and failing to direct the subpoena to a
9 custodian of records or another person qualified to certify them.

10 **III. RESPONSES TO REQUEST FOR ORAL DEPOSITION**

11 Responding Party objects to the Subpoena's request for an oral deposition of Mr. Gross
12 on the ground that Mr. Gross remains a member of the legal team of Facebook's adversary, and
13 Facebook has not met its burden to show his deposition is required, notwithstanding the very
14 strong presumption against the deposition of the attorneys of an opposing party. Responding
15 party further objects on the ground that the request for an oral deposition is premature in light of
16 the Court's March 15, 2019 order and that the date chosen for his deposition is unduly
17 inconvenient for Mr. Gross and counsel and was chosen without prior consultation.

18 **IV. RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

19 Responding Party objects to the extent that the Subpoenas' instructions purport to
20 establish obligations greater than those provided under the law.

21 Responding Party further objects on the ground that Facebook, in its request for ESI,
22 has failed to take reasonable steps to avoid imposing undue burden or expense on the
23 Responding Party.

24 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1**

25 Responding Party objects to the request to the extent it seeks information that is protected
26 from disclosure by the attorney-client privilege, the work product doctrine, and any other
27 applicable privilege or doctrine protecting such information from disclosure.

28 Responding Party objects to the request on the ground that it is overbroad in that it

1 includes within its scope documents that have no relevance to the matters currently at issue,
2 including without limitation documents concerning the drafting and filing of the referenced court
3 filings, the legal arguments made by either side, and recent court filings concerning Mr. Kramer's
4 disclosure of documents to the DCMS, and therefore appear requested with the purpose of
5 harassing Responding Party.

6 Responding Party objects to the request to any other extent that it is vague, overly broad,
7 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
8 discovery of admissible evidence.

9 Responding Party objects to the request on the ground and to the extent that it may not be
10 possible to identify responsive documents based on the wording of the request.

11 Responding Party objects to the request to the extent that the time for which production is
12 demanded is unreasonably short, particularly when considered in combination with the
13 aforementioned over-breadth of the request and the inability to access information potentially
14 subject to the request.

15 Responding Party objects to the request to the extent it seeks confidential financial,
16 proprietary, business or personal information.

17 Responding Party objects to the request to the extent it impermissibly seeks to compel
18 through its phrasing the admission by Responding Party that any particular event occurred. To the
19 extent that Responding Party provides responses to the request such responses do not constitute
20 any such admission that any such particular event occurred.

21 Responding Party objects to the request to the extent it assumes facts that have not been
22 established, that are not true, or that are inaccurate.

23 Responding Party objects to the request to the extent it requires answers greater than,
24 beyond the requirements of, and/or at variance to applicable California law.

25 Responding Party objects to the request to the extent it does not adequately define the
26 terms used in them.

27 Responding Party objects to the request to the extent it seeks information that is not in
28 Responding Party's possession, custody or control.

1 Responding Party objects to the request to the extent it seeks to impose an obligation on
2 Responding Party to provide information for or on behalf of any person or entity other than
3 Responding Party.

4 Responding Party objects to the request to the extent that the discovery sought is
5 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
6 convenient, less burdensome or less expensive.

7 The objections and responses herein are made without waiver of and with specific
8 preservation of all objections as to competency, relevancy, materiality, privilege, and
9 admissibility of the document or the subject matter thereof as evidence for any purpose and any
10 proceeding in this action (including trial) and in other actions.

11 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2**

12 Responding Party objects to the request to the extent it seeks information that is protected
13 from disclosure by the attorney-client privilege, the work product doctrine, and any other
14 applicable privilege or doctrine protecting such information from disclosure.

15 Responding Party objects to the request on the ground that it is overbroad in that it
16 includes within its scope documents that have no relevance to the matters currently at issue,
17 including without limitation documents concerning the drafting and filing of the referenced court
18 filings, the legal arguments made by either side, and recent court filings concerning Mr. Kramer's
19 disclosure of documents to the DCMS, and therefore appear requested with the purpose of
20 harassing Responding Party.

21 Responding Party objects to the request to any other extent that it is vague, overly broad,
22 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
23 discovery of admissible evidence.

24 Responding Party objects to the request on the ground and to the extent that it may not be
25 possible to identify responsive documents based on the wording of the request.

26 Responding Party objects to the request to the extent that the time for which production is
27 demanded is unreasonably short, particularly when considered in combination with the
28 aforementioned over-breadth of the request and the inability to access information potentially

1 subject to the request.

2 Responding Party objects to the request to the extent it seeks confidential financial,
3 proprietary, business or personal information.

4 Responding Party objects to the request to the extent it impermissibly seeks to compel
5 through its phrasing the admission by Responding Party that any particular event occurred. To the
6 extent that Responding Party provides responses to the request such responses do not constitute
7 any such admission that any such particular event occurred.

8 Responding Party objects to the request to the extent it assumes facts that have not been
9 established, that are not true, or that are inaccurate.

10 Responding Party objects to the request to the extent it requires answers greater than,
11 beyond the requirements of, and/or at variance to applicable California law.

12 Responding Party objects to the request to the extent it does not adequately define the
13 terms used in them.

14 Responding Party objects to the request to the extent it seeks information that is not in
15 Responding Party's possession, custody or control.

16 Responding Party objects to the request to the extent it seeks to impose an obligation on
17 Responding Party to provide information for or on behalf of any person or entity other than
18 Responding Party.

19 Responding Party objects to the request to the extent that the discovery sought is
20 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
21 convenient, less burdensome or less expensive.

22 The objections and responses herein are made without waiver of and with specific
23 preservation of all objections as to competency, relevancy, materiality, privilege, and
24 admissibility of the document or the subject matter thereof as evidence for any purpose and any
25 proceeding in this action (including trial) and in other actions.

26 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3**

27 Responding Party objects to the request to the extent it seeks information that is protected
28 from disclosure by the attorney-client privilege, the work product doctrine, and any other

1 applicable privilege or doctrine protecting such information from disclosure.

2 Responding Party objects to the request on the ground that it is overbroad in that it
3 includes within its scope documents that have no relevance to the matters currently at issue,
4 including without limitation documents concerning the drafting and filing of the referenced court
5 filings, the legal arguments made either side, and recent court filings concerning Mr. Kramer's
6 disclosure of documents to the DCMS, and therefore appear requested with the purpose of
7 harassing Responding Party.

8 Responding Party objects to the request to any other extent that it is vague, overly broad,
9 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
10 discovery of admissible evidence.

11 Responding Party objects to the request on the ground and to the extent that it may not be
12 possible to identify responsive documents based on the wording of the request.

13 Responding Party objects to the request to the extent that the time for which production is
14 demanded is unreasonably short, particularly when considered in combination with the
15 aforementioned over-breadth of the request and the inability to access information potentially
16 subject to the request.

17 Responding Party objects to the request to the extent it seeks confidential financial,
18 proprietary, business or personal information.

19 Responding Party objects to the request to the extent it impermissibly seeks to compel
20 through its phrasing the admission by Responding Party that any particular event occurred. To the
21 extent that Responding Party provides responses to the request such responses do not constitute
22 any such admission that any such particular event occurred.

23 Responding Party objects to the request to the extent it assumes facts that have not been
24 established, that are not true, or that are inaccurate.

25 Responding Party objects to the request to the extent it requires answers greater than,
26 beyond the requirements of, and/or at variance to applicable California law.

27 Responding Party objects to the request to the extent it does not adequately define the
28 terms used in them.

1 Responding Party objects to the request to the extent it seeks information that is not in
2 Responding Party's possession, custody or control.

3 Responding Party objects to the request to the extent it seeks to impose an obligation on
4 Responding Party to provide information for or on behalf of any person or entity other than
5 Responding Party.

6 Responding Party objects to the request to the extent that the discovery sought is
7 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
8 convenient, less burdensome or less expensive.

9 The objections and responses herein are made without waiver of and with specific
10 preservation of all objections as to competency, relevancy, materiality, privilege, and
11 admissibility of the document or the subject matter thereof as evidence for any purpose and any
12 proceeding in this action (including trial) and in other actions.

13 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4**

14 Responding Party objects to the request to the extent that the time for which production is
15 demanded is unreasonably short, particularly when considered in combination with the
16 aforementioned over-breadth of the request and the inability to access information potentially
17 subject to the request.

18 Responding Party objects to the request to the extent it impermissibly seeks to compel
19 through its phrasing the admission by Responding Party that any particular event occurred. To the
20 extent that Responding Party provides responses to the request such responses do not constitute
21 any such admission that any such particular event occurred.

22 Responding Party objects to the request to the extent it assumes facts that have not been
23 established, that are not true, or that are inaccurate.

24 Responding Party objects to the request to the extent it seeks to impose an obligation on
25 Responding Party to provide information for or on behalf of any person or entity other than
26 Responding Party.

27 Responding Party objects to the request to the extent that the discovery sought is
28 unreasonably cumulative or duplicative, or is obtainable from some other source that is more

1 convenient, less burdensome or less expensive.

2 The objections and responses herein are made without waiver of and with specific
3 preservation of all objections as to competency, relevancy, materiality, privilege, and
4 admissibility of the document or the subject matter thereof as evidence for any purpose and any
5 proceeding in this action (including trial) and in other actions.

6 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5**

7 Responding Party objects to the request to the extent it seeks information that is protected
8 from disclosure by the attorney-client privilege, the work product doctrine, and any other
9 applicable privilege or doctrine protecting such information from disclosure.

10 Responding Party objects to the request on the ground that it is overbroad in that it
11 includes within its scope documents that have no relevance to the matters currently at issue,
12 including without limitation documents concerning the drafting and filing of recent court filings
13 concerning Mr. Kramer's disclosure of documents to the DCMS, and therefore appear requested
14 with the purpose of harassing Responding Party.

15 Responding Party objects to the request to any other extent that it is vague, overly broad,
16 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
17 discovery of admissible evidence.

18 Responding Party objects to the request on the ground and to the extent that it may not be
19 possible to identify responsive documents based on the wording of the request.

20 Responding Party objects to the request to the extent that the time for which production is
21 demanded is unreasonably short, particularly when considered in combination with the
22 aforementioned over-breadth of the request and the inability to access information potentially
23 subject to the request.

24 Responding Party objects to the request to the extent it impermissibly seeks to compel
25 through its phrasing the admission by Responding Party that any particular event occurred. To the
26 extent that Responding Party provides responses to the request such responses do not constitute
27 any such admission that any such particular event occurred.

28 Responding Party objects to the request to the extent it assumes facts that have not been

1 established, that are not true, or that are inaccurate.

2 Responding Party objects to the request to the extent it requires answers greater than,
3 beyond the requirements of, and/or at variance to applicable California law.

4 Responding Party objects to the request to the extent it does not adequately define the
5 terms used in them.

6 Responding Party objects to the request to the extent it seeks information that is not in
7 Responding Party's possession, custody or control.

8 Responding Party objects to the request to the extent it seeks to impose an obligation on
9 Responding Party to provide information for or on behalf of any person or entity other than
10 Responding Party.

11 The objections and responses herein are made without waiver of and with specific
12 preservation of all objections as to competency, relevancy, materiality, privilege, and
13 admissibility of the document or the subject matter thereof as evidence for any purpose and any
14 proceeding in this action (including trial) and in other actions.

15 **RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6**

16 Responding Party objects to the request to the extent it seeks information that is protected
17 from disclosure by the attorney-client privilege, the work product doctrine, and any other
18 applicable privilege or doctrine protecting such information from disclosure.

19 Responding Party objects to the request on the ground that it is overbroad in that it
20 includes within its scope documents that have no relevance to the matters currently at issue,
21 including without limitation documents concerning the drafting and filing of the referenced court
22 filings, the legal arguments made either side, and recent court filings concerning Mr. Kramer's
23 disclosure of documents to the DCMS, and therefore appear requested with the purpose of
24 harassing Responding Party.

25 Responding Party objects to the request to any other extent that it is vague, overly broad,
26 burdensome, and/or seeks information that is neither material, necessary, or likely to lead to the
27 discovery of admissible evidence.

28 Responding Party objects to the request on the ground and to the extent that it may not be

1 possible to identify responsive documents based on the wording of the request.

2 Responding Party objects to the request to the extent that the time for which production is
3 demanded is unreasonably short, particularly when considered in combination with the
4 aforementioned over-breadth of the request and the inability to access information potentially
5 subject to the request.

6 Responding Party objects to the request to the extent it seeks confidential financial,
7 proprietary, business or personal information.

8 Responding Party objects to the request to the extent it impermissibly seeks to compel
9 through its phrasing the admission by Responding Party that any particular event occurred. To the
10 extent that Responding Party provides responses to the request such responses do not constitute
11 any such admission that any such particular event occurred.

12 Responding Party objects to the request to the extent it assumes facts that have not been
13 established, that are not true, or that are inaccurate.

14 Responding Party objects to the request to the extent it requires answers greater than,
15 beyond the requirements of, and/or at variance to applicable California law.

16 Responding Party objects to the request to the extent it does not adequately define the
17 terms used in them.

18 Responding Party objects to the request to the extent it seeks information that is not in
19 Responding Party's possession, custody or control.

20 Responding Party objects to the request to the extent it seeks to impose an obligation on
21 Responding Party to provide information for or on behalf of any person or entity other than
22 Responding Party.

23 Responding Party objects to the request to the extent that the discovery sought is
24 unreasonably cumulative or duplicative, or is obtainable from some other source that is more
25 convenient, less burdensome or less expensive.

26 The objections and responses herein are made without waiver of and with specific
27 preservation of all objections as to competency, relevancy, materiality, privilege, and
28

1 admissibility of the document or the subject matter thereof as evidence for any purpose and any
2 proceeding in this action (including trial) and in other actions.

3
4 Date: April 3, 2019

WILSON ELSEER MOSKOWITZ EDELMAN &
DICKER LLP

5
6 

7
8

Donald P. Sullivan
9 Attorneys for Non-Party
STUART GROSS

EXHIBIT 7

[REDACTED]

From: Sullivan, Donald P. <Donald.Sullivan@wilsonelser.com>
Sent: Wednesday, April 10, 2019 8:27 PM
To: Zachary Abrahamson; Laura Miller; 'Lombard, Lynn'; 'sgross@grosskleinlaw.com'; 'godkin@birnbaumgodkin.com'; 'kruzer@birnbaumgodkin.com'; 'jrusso@computerlaw.com'; 'csargent@computerlaw.com'; 'ecf@computerlaw.com'; Vialpando, Joyce I.; Palumbo, Dea; 'jmurphy@MPBF.com'; 'jlassart@mpbf.com'; 'TMazzucco@MPBF.com'; 'JLeveroni@MPBF.com'; Catherine Kim; SERVICE-SIX4THREE; 'jpeloquin@connkavanaugh.com'; 'dfishman@connkavanaugh.com'; Sonal Mehta
Cc: Bolotin, Steven; Weigand, Tory
Subject: RE: Facebook, Inc. vs. David Godkin, Civil Action No. 1984CV00906

Zachary,

Last week, I requested that your colleague, Laura Miller, provide citations to the legal authority supporting Facebook's arguments that a deposition subpoena with a request for production of documents addressed to a non-party can have two separate compliance dates; that the date set for production of documents can be less than the longer of 20 days after issuance or 15 days after service; and that not objecting before the designated date for the depositions waives all objections by a non-party to the requests for production. Providing this authority will make our conference call much more efficient and effective. Thanks.

Donald P. Sullivan
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
525 Market Street - 17th Floor
San Francisco, CA 94105-2725
415.625.9249 (Direct)
415.385.7221 (Cell)
415.433.0990 (Main)
415.434.1370 (Fax)
donald.sullivan@wilsonelser.com

From: Zachary Abrahamson [mailto:ZAbrahamson@durietangri.com]
Sent: Wednesday, April 10, 2019 12:58 PM
To: Sullivan, Donald P. <Donald.Sullivan@wilsonelser.com>; Laura Miller <LMiller@durietangri.com>; 'Lombard, Lynn' <LLombard@morrisonmahoney.com>; 'sgross@grosskleinlaw.com' <sgross@grosskleinlaw.com>; 'godkin@birnbaumgodkin.com' <godkin@birnbaumgodkin.com>; 'kruzer@birnbaumgodkin.com' <kruzer@birnbaumgodkin.com>; 'jrusso@computerlaw.com' <jrusso@computerlaw.com>; 'csargent@computerlaw.com' <csargent@computerlaw.com>; 'ecf@computerlaw.com' <ecf@computerlaw.com>; Vialpando, Joyce I. <Joyce.Vialpando@wilsonelser.com>; Palumbo, Dea <Dea.Palumbo@wilsonelser.com>; 'jmurphy@MPBF.com' <jmurphy@MPBF.com>; 'jlassart@mpbf.com' <jlassart@mpbf.com>; 'TMazzucco@MPBF.com' <TMazzucco@MPBF.com>; 'JLeveroni@MPBF.com' <JLeveroni@MPBF.com>; Catherine Kim <CKim@durietangri.com>; SERVICE-SIX4THREE <SERVICE-SIX4THREE@durietangri.com>; 'jpeloquin@connkavanaugh.com' <jpeloquin@connkavanaugh.com>; 'dfishman@connkavanaugh.com' <dfishman@connkavanaugh.com>; Sonal Mehta <SMehta@durietangri.com>
Cc: Bolotin, Steven <SBolotin@morrisonmahoney.com>; Weigand, Tory <TWeigand@morrisonmahoney.com>
Subject: RE: Facebook, Inc. vs. David Godkin, Civil Action No. 1984CV00906

Counsel,

We have received no response to our Monday e-mail, below. Please comply with the subpoena served on Mr. Gross. If you intend to stand on the objections served on April 3, 2019, then we request that you identify three times when you are available to meet and confer this week regarding those objections. Facebook reserves all rights.

From: Zachary Abrahamson

Sent: Monday, April 8, 2019 9:03 PM

To: 'Sullivan, Donald P.' <Donald.Sullivan@wilsonelser.com>; Laura Miller <LMiller@durietangri.com>; 'Lombard, Lynn' <LLombard@morrisonmahoney.com>; 'sgross@grosskleinlaw.com' <sgross@grosskleinlaw.com>; 'godkin@birnbaumgodkin.com' <godkin@birnbaumgodkin.com>; 'kruzer@birnbaumgodkin.com' <kruzer@birnbaumgodkin.com>; 'jrusso@computerlaw.com' <jrusso@computerlaw.com>; 'csargent@computerlaw.com' <csargent@computerlaw.com>; 'ecf@computerlaw.com' <ecf@computerlaw.com>; Vialpando, Joyce I. <Joyce.Vialpando@wilsonelser.com>; Palumbo, Dea <Dea.Palumbo@wilsonelser.com>; 'jmurphy@MPBF.com' <jmurphy@MPBF.com>; 'jlassart@mpbf.com' <jlassart@mpbf.com>; 'TMazzucco@MPBF.com' <TMazzucco@MPBF.com>; 'JLeveroni@MPBF.com' <JLeveroni@MPBF.com>; Catherine Kim <CKim@durietangri.com>; SERVICE-SIX4THREE <SERVICE-SIX4THREE@durietangri.com>; 'jpeloquin@connkavanaugh.com' <jpeloquin@connkavanaugh.com>; 'dfishman@connkavanaugh.com' <dfishman@connkavanaugh.com>; Sonal Mehta <SMehta@durietangri.com>;
Cc: Bolotin, Steven <SBolotin@morrisonmahoney.com>; Weigand, Tory <TWeigand@morrisonmahoney.com>
Subject: RE: Facebook, Inc. vs. David Godkin, Civil Action No. 1984CV00906

Counsel,

Mr. Gross was served with a valid subpoena commanding the production of documents and testimony. Section 2020.020 of California's Code of Civil Procedure permits Facebook to serve a deposition subpoena commanding testimony and the production of documents. That deposition subpoena complied with all applicable requirements under California's civil code: First, Facebook provided Mr. Gross "a reasonable opportunity to locate and produce any designated business records, documents, electronically stored information, and tangible things"—to wit, almost two weeks. See Civ. Proc. Code § 2020.220(a). Second, Facebook provided "a reasonable time to travel to the place of deposition." *Id.* Finally, Facebook's subpoena complied with the provisions of section 2020.510, including the provisions of section 2020.310 incorporated therein. As you know, these are the provisions governing the preparation and service of deposition subpoenas commanding testimony and document production.

In response to your e-mail, we would direct you to the Court's March 15 order for authority supporting Facebook's actions. That order granted Facebook leave to serve Mr. Gross with a subpoena duces tecum—which Facebook did on March 22. See Cal. Prac. Guide Civ. Pro. Before Trial Ch. 8E-6 (The Rutter Group 2018) (describing the "'records and testimony' subpoena, officially called 'deposition subpoena for personal appearance and production of documents and things'; formerly called a 'subpoena duces tecum'"). In addition, the Court was explicit that "[s]cheduling of depositions are contingent on production[.]" See Order re: Facebook's Motion to Open Discovery and to Compel at 13:18-20 (March 15, 2019). The production date set in Mr. Gross's subpoena simply carries out that order.

We do not understand your argument based on the timeline provided by section 2020.410(c). Facebook did not serve a deposition subpoena for the production of business records—indeed, such a deposition subpoena would be inapposite here, where Facebook seeks, among other documents and things, e-mails transmitted to Mr. Gross by others. See *generally Urban Pac. Equities Corp. v. Superior Court*, 59 Cal. App. 4th 688, 692-93 (1997). Accordingly, the provisions of section 2020.410 are irrelevant.

We again request that you comply with the subpoena served on Mr. Gross. If you intend to stand on the objections served on April 3, 2019, then we request that you identify three times when you are available to meet and confer this week regarding those objections. Facebook reserves all rights.

From: Sullivan, Donald P. <Donald.Sullivan@wilsonelser.com>
Sent: Thursday, April 4, 2019 8:38 PM
To: Laura Miller <LMiller@durietangri.com>; 'Lombard, Lynn' <LLombard@morrisonmahoney.com>; 'sgross@grosskleinlaw.com' <sgross@grosskleinlaw.com>; 'godkin@birnbaumgodkin.com' <godkin@birnbaumgodkin.com>; 'kruzer@birnbaumgodkin.com' <kruzer@birnbaumgodkin.com>; 'jrusso@computerlaw.com' <jrusso@computerlaw.com>; 'csargent@computerlaw.com' <csargent@computerlaw.com>; 'ecf@computerlaw.com' <ecf@computerlaw.com>; Vialpando, Joyce I. <Joyce.Vialpando@wilsonelser.com>; Palumbo, Dea <Dea.Palumbo@wilsonelser.com>; 'jmurphy@MPBF.com' <jmurphy@MPBF.com>; 'jlassart@mpbf.com' <jlassart@mpbf.com>; 'TMazzucco@MPBF.com' <TMazzucco@MPBF.com>; 'JLeveroni@MPBF.com' <JLeveroni@MPBF.com>; Catherine Kim <CKim@durietangri.com>; SERVICE-SIX4THREE <SERVICE-SIX4THREE@durietangri.com>; 'jpeloquin@connkavanaugh.com' <jpeloquin@connkavanaugh.com>; 'dfishman@connkavanaugh.com' <dfishman@connkavanaugh.com>; Sonal Mehta <SMehta@durietangri.com>
Cc: Bolotin, Steven <SBolotin@morrisonmahoney.com>; Weigand, Tory <TWeigand@morrisonmahoney.com>
Subject: RE: Facebook, Inc. vs. David Godkin, Civil Action No. 1984CV00906

Laura,
I am presently out of state and not available tomorrow.

It is our position that the Court instructed FB to serve a subpoena duces tecum on Mr. Gross, who is not a party to the litigation. Instead, FB served a deposition subpoena. The date of production of documents in response to a deposition subpoena is the date of the deposition. The noticed date of deposition is 5/3. Thus, the objections are timely. If FB wants to serve a subpoena duces tecum, in accordance with the Court's order, it should do so. We will then respond to in accordance with the rules and meet and confer as needed thereafter. Your statement that all objections are waived is not supported by the law.

Regarding the law, please provide authority for the following: (1) that a subpoena for deposition and production of documents addressed to a non-party can establish different dates for the production and deposition; (2) if so, that the date set for production can be less than the longer of 20 days after issuance or 15 days after service; and (3) if so, that failure to object before such a date set for production waives all objections by a non-party to the requests for production. We've looked and cannot find a single case that supports Facebook's position.

I look forward to your response.

Donald P. Sullivan
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
525 Market Street - 17th Floor
San Francisco, CA 94105-2725
415.625.9249 (Direct)
415.385.7221 (Cell)
415.433.0990 (Main)
415.434.1370 (Fax)
donald.sullivan@wilsonelser.com

From: Laura Miller [<mailto:LMiller@durietangri.com>]
Sent: Thursday, April 04, 2019 12:16 PM
To: Sullivan, Donald P. <Donald.Sullivan@wilsonelser.com>; 'Lombard, Lynn' <LLombard@morrisonmahoney.com>; 'sgross@grosskleinlaw.com' <sgross@grosskleinlaw.com>; 'godkin@birnbaumgodkin.com' <godkin@birnbaumgodkin.com>; 'kruzer@birnbaumgodkin.com' <kruzer@birnbaumgodkin.com>; 'jrusso@computerlaw.com' <jrusso@computerlaw.com>; 'csargent@computerlaw.com' <csargent@computerlaw.com>;

'ecf@computerlaw.com' <ecf@computerlaw.com>; Vialpando, Joyce I. <Joyce.Vialpando@wilsonelser.com>; Palumbo, Dea <Dea.Palumbo@wilsonelser.com>; 'jmurphy@MPBF.com' <jmurphy@MPBF.com>; 'jlassart@mpbf.com' <jlassart@mpbf.com>; 'TMazzucco@MPBF.com' <TMazzucco@MPBF.com>; 'JLeveroni@MPBF.com' <JLeveroni@MPBF.com>; Catherine Kim <CKim@durietangri.com>; SERVICE-SIX4THREE <SERVICE-SIX4THREE@durietangri.com>; 'jpeloquin@connkavanaugh.com' <jpeloquin@connkavanaugh.com>; 'dfishman@connkavanaugh.com' <dfishman@connkavanaugh.com>; Sonal Mehta <SMehta@durietangri.com>
Cc: Bolotin, Steven <SBolotin@morrisonmahoney.com>; Weigand, Tory <TWeigand@morrisonmahoney.com>
Subject: RE: Facebook, Inc. vs. David Godkin, Civil Action No. 1984CV00906

Counsel,

Consistent with the Court's March 15 order, Facebook served a subpoena compelling the production of documents on April 2, 2019. Mr. Gross's April 3, 2019 objections are untimely and so are waived. In any event, the objections raised regarding the form of subpoena are without merit and have already been addressed by the Court's Case Management Order No. 21. Your objection regarding the consumer notice provision conspicuously omits any identification of the alleged "consumer" and we are unaware of any individual or entity that qualifies as such under CCP § 1985.3 in relation to Facebook's document requests.

Please let us know your availability to meet and confer tomorrow. We will engage a court reporter to transcribe the call.

Best,

Laura Miller | Attorney | Durie Tangri LLP | 415-362-6666 | lmiller@durietangri.com

From: Sullivan, Donald P. <Donald.Sullivan@wilsonelser.com>

Sent: Wednesday, April 3, 2019 7:43 PM

To: 'Lombard, Lynn' <LLombard@morrisonmahoney.com>; 'sgross@grosskleinlaw.com' <sgross@grosskleinlaw.com>; 'godkin@birnbaumgodkin.com' <godkin@birnbaumgodkin.com>; 'kruzer@birnbaumgodkin.com' <kruzer@birnbaumgodkin.com>; 'jrusso@computerlaw.com' <jrusso@computerlaw.com>; 'csargent@computerlaw.com' <csargent@computerlaw.com>; 'ecf@computerlaw.com' <ecf@computerlaw.com>; Vialpando, Joyce I. <Joyce.Vialpando@wilsonelser.com>; Palumbo, Dea <Dea.Palumbo@wilsonelser.com>; 'jmurphy@MPBF.com' <jmurphy@MPBF.com>; 'jlassart@mpbf.com' <jlassart@mpbf.com>; 'TMazzucco@MPBF.com' <TMazzucco@MPBF.com>; 'JLeveroni@MPBF.com' <JLeveroni@MPBF.com>; Catherine Kim <CKim@durietangri.com>; SERVICE-SIX4THREE <SERVICE-SIX4THREE@durietangri.com>; 'jpeloquin@connkavanaugh.com' <jpeloquin@connkavanaugh.com>; 'dfishman@connkavanaugh.com' <dfishman@connkavanaugh.com>; Sonal Mehta <SMehta@durietangri.com>

Cc: Bolotin, Steven <SBolotin@morrisonmahoney.com>; Weigand, Tory <TWeigand@morrisonmahoney.com>

Subject: RE: Facebook, Inc. vs. David Godkin, Civil Action No. 1984CV00906

Counsel,

Attached please find the Objection and Response of Stuart Gross to Facebook's Deposition Subpoena.

Donald P. Sullivan
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
525 Market Street - 17th Floor
San Francisco, CA 94105-2725
415.625.9249 (Direct)
415.385.7221 (Cell)
415.433.0990 (Main)

415.434.1370 (Fax)
donald.sullivan@wilsonelser.com

From: Lombard, Lynn [<mailto:LLombard@morrisonmahoney.com>]

Sent: Tuesday, April 02, 2019 12:08 PM

To: 'sgross@grosskleinlaw.com' <sgross@grosskleinlaw.com>; 'godkin@birnbaumgodkin.com' <godkin@birnbaumgodkin.com>; 'kruzer@birnbaumgodkin.com' <kruzer@birnbaumgodkin.com>; 'jrusso@computerlaw.com' <jrusso@computerlaw.com>; 'csargent@computerlaw.com' <csargent@computerlaw.com>; 'ecf@computerlaw.com' <ecf@computerlaw.com>; Sullivan, Donald P. <Donald.Sullivan@wilsonelser.com>; Vialpando, Joyce I. <Joyce.Vialpando@wilsonelser.com>; Palumbo, Dea <Dea.Palumbo@wilsonelser.com>; 'jmurphy@MPBF.com' <jmurphy@MPBF.com>; 'jlassart@mpbf.com' <jlassart@mpbf.com>; 'TMazzucco@MPBF.com' <TMazzucco@MPBF.com>; 'JLeveroni@MPBF.com' <JLeveroni@MPBF.com>; 'CKim@durietangri.com' <CKim@durietangri.com>; 'SERVICE-SIX4THREE@durietangri.com' <SERVICE-SIX4THREE@durietangri.com>; 'jpeloquin@connkavanaugh.com' <jpeloquin@connkavanaugh.com>; 'dfishman@connkavanaugh.com' <dfishman@connkavanaugh.com>; 'SMehta@durietangri.com' <SMehta@durietangri.com>
Cc: Bolotin, Steven <SBolotin@morrisonmahoney.com>; Weigand, Tory <TWeigand@morrisonmahoney.com>
Subject: Facebook, Inc. vs. David Godkin, Civil Action No. 1984CV00906

Dear Counsel:

Enclosed in connection with the above-referenced matter, please find the following:

1. Objection of David Godkin to Subpoena Ad Testificandum; and
2. Objection of David Godkin to Subpoena Duces Tecum.

Regards
Lynn Lombard

Lynn Lombard
Legal Assistant to Steven J. Bolotin & Tory A. Weigand

MORRISON MAHONEY LLP
250 Summer Street, Boston, MA 02210
T (617) 439-7500 x3006
LLombard@morrisonmahoney.com | www.morrisonmahoney.com

Connecticut | Massachusetts | New Hampshire | New Jersey | New York | Rhode Island | United Kingdom

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CONFIDENTIALITY NOTICE: This electronic message is intended to be viewed only by the individual or entity to whom it is addressed. It may contain information that is privileged, confidential and exempt from disclosure under applicable law. Any dissemination, distribution or copying of this communication is strictly prohibited without our prior permission. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, or if you have

received this communication in error, please notify us immediately by return e-mail and delete the original message and any copies of it from your computer system.

For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at www.wilsonelser.com or refer to any of our offices.

Thank you.

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Thank you.

EXHIBIT 8

[REDACTED]

From: Catherine Kim
Sent: Wednesday, April 10, 2019 2:24 PM
To: Bolotin, Steven; Lombard, Lynn; 'jmurphy@mpbf.com'; 'jlassart@mpbf.com'; 'tmazzucco@mpbf.com'; jleveroni@mpbf.com; Weigand, Tory
Cc: SERVICE-SIX4THREE; James B. Peloquin
Subject: RE: Facebook, Inc. vs. David Godkin, Civil Action No. 1984CV00906

Dear Mr. Bolotin, please inform us when Mr. Godkin's counsel expects to be able to propose times for a meet and confer regarding Mr. Godkin's subpoena objections. We first emailed you on April 3, a week ago, asking for times you would be available to meet and confer last week. We emailed you again and proposed times for this week. The April 26 discovery conference is fast approaching and in order to avoid wasting the Court's time, we need to meet and confer regarding any disputes over Mr. Godkin's subpoena objections prior to the conference.

Sincerely, Cat Kim

From: Bolotin, Steven <SBolotin@morrisonmahoney.com>
Sent: Tuesday, April 9, 2019 12:58 PM
To: Catherine Kim <CKim@durietangri.com>; Lombard, Lynn <LLombard@morrisonmahoney.com>; 'jmurphy@mpbf.com' <jmurphy@mpbf.com>; 'jlassart@mpbf.com' <jlassart@mpbf.com>; 'tmazzucco@mpbf.com' <tmazzucco@mpbf.com>; jleveroni@mpbf.com; Weigand, Tory <TWeigand@morrisonmahoney.com>
Cc: SERVICE-SIX4THREE <SERVICE-SIX4THREE@durietangri.com>; James B. Peloquin <JPeloquin@connkavanaugh.com>
Subject: RE: Facebook, Inc. vs. David Godkin, Civil Action No. 1984CV00906

We are not available tomorrow during that time. We are working to identify appropriate alternative times when counsel are available.

Steven J. Bolotin
Of Counsel

MORRISON MAHONEY LLP
250 Summer St, Boston, MA 02210
T (617) 737-8878 | F (617) 342-4943
SBolotin@morrisonmahoney.com | www.morrisonmahoney.com

Connecticut | Massachusetts | New Hampshire | New Jersey | New York | Rhode Island | United Kingdom

The information transmitted, including attachments, is intended only for the person(s) or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmissions, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and destroy any copies of this information.

From: Catherine Kim [<mailto:CKim@durietangri.com>]
Sent: Tuesday, April 09, 2019 3:55 PM
To: Bolotin, Steven <SBolotin@morrisonmahoney.com>; Lombard, Lynn <LLombard@morrisonmahoney.com>; 'jmurphy@mpbf.com' <jmurphy@mpbf.com>; 'jlassart@mpbf.com' <jlassart@mpbf.com>; 'tmazzucco@mpbf.com' <tmazzucco@mpbf.com>; jleveroni@mpbf.com; Weigand, Tory <TWeigand@morrisonmahoney.com>

Cc: SERVICE-SIX4THREE <SERVICE-SIX4THREE@durietangri.com>; James B. Peloquin <JPeloquin@connkavanaugh.com>
Subject: RE: Facebook, Inc. vs. David Godkin, Civil Action No. 1984CV00906

****External Email****

Dear Mr. Bolotin, we request a response to our email below. We remain available to meet and confer on Thursday at 1-3 p.m. Eastern.

Sincerely, Cat Kim

From: Catherine Kim <CKim@durietangri.com>

Sent: Monday, April 8, 2019 11:12 AM

To: Bolotin, Steven <SBolotin@morrisonmahoney.com>; Lombard, Lynn <LLombard@morrisonmahoney.com>; 'jmurphy@mpbf.com' <jmurphy@mpbf.com>; 'jlassart@mpbf.com' <jlassart@mpbf.com>; 'tmazzucco@mpbf.com' <tmazzucco@mpbf.com>; 'jleveroni@mpbf.com'; Weigand, Tory <TWeigand@morrisonmahoney.com>

Cc: SERVICE-SIX4THREE <SERVICE-SIX4THREE@durietangri.com>; James B. Peloquin <JPeloquin@connkavanaugh.com>

Subject: RE: Facebook, Inc. vs. David Godkin, Civil Action No. 1984CV00906

Dear Mr. Bolotin, Facebook's Massachusetts and California counsel is available to meet and confer at these times:

Tuesday – 3-4 p.m. Eastern

Thursday – 1-3 p.m. Eastern

If none of these times works for you, please provide times that you are available to meet and confer tomorrow or Thursday. Because the subpoena and Mr. Godkin's objections are an issue between Facebook and Mr. Godkin only, the meet and confer should be limited to Mr. Godkin's and Facebook's counsel. This email is sent on behalf of Facebook's Massachusetts and California counsel.

Sincerely, Cat Kim

From: Bolotin, Steven <SBolotin@morrisonmahoney.com>

Sent: Friday, April 5, 2019 1:52 PM

To: Catherine Kim <CKim@durietangri.com>; Lombard, Lynn <LLombard@morrisonmahoney.com>; 'jmurphy@mpbf.com' <jmurphy@mpbf.com>; 'jlassart@mpbf.com' <jlassart@mpbf.com>; 'tmazzucco@mpbf.com' <tmazzucco@mpbf.com>; 'jleveroni@mpbf.com'; Weigand, Tory <TWeigand@morrisonmahoney.com>

Cc: SERVICE-SIX4THREE <SERVICE-SIX4THREE@durietangri.com>

Subject: RE: Facebook, Inc. vs. David Godkin, Civil Action No. 1984CV00906

Ms. Kim,

As you are aware, these were Massachusetts subpoenas issued by Massachusetts counsel in a Massachusetts action pursuant to an order by a Massachusetts judge. Accordingly, we will address discovery issues pursuant to the applicable Massachusetts rules. To that end, we are available to confer with the counsel issuing the subpoenas pursuant to Massachusetts Superior Court Rule 9C. California counsel for all parties are welcome to participate. However, there is no provision under the Massachusetts Rules for such conference to be recorded or transcribed, and we do not agree to conditions.

Please have Massachusetts counsel contact us by e-mail with some proposed dates and times next week for a conference.

Steven J. Bolotin
Of Counsel

MORRISON MAHONEY LLP
250 Summer St, Boston, MA 02210
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SBolotin@morrisonmahoney.com | www.morrisonmahoney.com

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From: Catherine Kim [<mailto:CKim@durietangri.com>]
Sent: Wednesday, April 03, 2019 2:28 PM
To: Lombard, Lynn <LLombard@morrisonmahoney.com>; Bolotin, Steven <SBolotin@morrisonmahoney.com>; 'jmurphy@mpbf.com' <jmurphy@mpbf.com>; 'jlassart@mpbf.com' <jlassart@mpbf.com>; 'tmazzucco@mpbf.com' <tmazzucco@mpbf.com>; 'jleveroni@mpbf.com' <jleveroni@mpbf.com>
Cc: SERVICE-SIX4THREE <SERVICE-SIX4THREE@durietangri.com>
Subject: RE: Facebook, Inc. vs. David Godkin, Civil Action No. 1984CV00906

****External Email****

Dear Counsel – we request a telephonic meet and confer regarding Mr. Godkin's objections to the subpoena duces tecum. Please provide times you are available to meet and confer tomorrow or Friday. We will engage a court reporter to transcribe the meet and confer.

Regarding Mr. Godkin's objections to the subpoena ad testificandum, the Court rejected these arguments yesterday in Case Management Order No. 21.

Best, Cat Kim

From: Lombard, Lynn <LLombard@morrisonmahoney.com>
Sent: Tuesday, April 2, 2019 12:08 PM
To: 'sgross@grosskleinlaw.com' <sgross@grosskleinlaw.com>; 'godkin@birnbaumgodkin.com' <godkin@birnbaumgodkin.com>; 'kruzer@birnbaumgodkin.com' <kruzer@birnbaumgodkin.com>; 'jrusso@computerlaw.com' <jrusso@computerlaw.com>; 'csargent@computerlaw.com' <csargent@computerlaw.com>; 'ecf@computerlaw.com' <ecf@computerlaw.com>; 'donald.sullivan@wilsonelser.com' <donald.sullivan@wilsonelser.com>; 'Joyce.Vialpando@wilsonelser.com' <Joyce.Vialpando@wilsonelser.com>; 'Dea.Palumbo@wilsonelser.com' <Dea.Palumbo@wilsonelser.com>; 'jmurphy@MPBF.com' <jmurphy@MPBF.com>; 'jlassart@mpbf.com' <jlassart@mpbf.com>; 'TMazzucco@MPBF.com' <TMazzucco@MPBF.com>; 'JLeveroni@MPBF.com' <JLeveroni@MPBF.com>; Catherine Kim <CKim@durietangri.com>; SERVICE-SIX4THREE <SERVICE-SIX4THREE@durietangri.com>; 'jpeloquin@connkavanaugh.com' <jpeloquin@connkavanaugh.com>; 'dfishman@connkavanaugh.com' <dfishman@connkavanaugh.com>; Sonal Mehta <SMehta@durietangri.com>
Cc: Bolotin, Steven <SBolotin@morrisonmahoney.com>; Weigand, Tory <TWeigand@morrisonmahoney.com>
Subject: Facebook, Inc. vs. David Godkin, Civil Action No. 1984CV00906

Dear Counsel:

Enclosed in connection with the above-referenced matter, please find the following:

1. Objection of David Godkin to Subpoena Ad Testificandum; and
2. Objection of David Godkin to Subpoena Duces Tecum.

Regards
Lynn Lombard

Lynn Lombard
Legal Assistant to Steven J. Bolotin & Tory A. Weigand

MORRISON MAHONEY LLP
250 Summer Street, Boston, MA 02210
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LLombard@morrisonmahoney.com | www.morrisonmahoney.com

Connecticut | Massachusetts | New Hampshire | New Jersey | New York | Rhode Island | United Kingdom

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EXHIBIT 9

[REDACTED]

From: Gabriela Galindo <Gabriela@servingbyirving.com>
Sent: Saturday, March 23, 2019 11:48 AM
To: Catherine Kim
Cc: Mark S. Pincus; info
Subject: Re: Service for Facebook in Sullivan County

We attempted service. This address is general address for the complex. I ran a search for him, the address we found is within this complex. The complex is basically empty. There are no vehicles. Our server could hardly get into this place due to the accumulated mud. The locations in the area are summer vacation homes. People do not really come up this way during the winter.

Please advise if you wish us to try back at a later time today or on Monday morning.

Gabriela Galindo
Serving by Irving, Inc.

On Mar 23, 2019, at 12:24 PM, Gabriela Galindo <Gabriela@servingbyirving.com> wrote:

Understood.

Gabriela Galindo
Serving by Irving, Inc.

On Mar 23, 2019, at 11:55 AM, Catherine Kim <CKim@durietangri.com> wrote:

Hi Mark – confirmed, we have to serve him personally.

Thanks,
Cat

From: Mark S. Pincus <mark@pincus-law.com>
Sent: Saturday, March 23, 2019 8:54 AM
To: Gabriela Galindo <Gabriela@servingbyirving.com>
Cc: info <info@servingbyirving.com>; Catherine Kim <CKim@durietangri.com>
Subject: RE: Service for Facebook in Sullivan County

I believe this is not Mr. Scaramellino's "actual place of business, dwelling place, or usual place of abode," so substituted service would not be sufficient. I have cc'ed Catherine Kim, Facebook's counsel in California.

Catherine, please confirm that, to your knowledge, this address is neither Mr. Scaramellino's "actual place of business, dwelling place, or usual place of abode." If it is not, we have to serve him personally and cannot just leave it with the person who answers the door.

Mark S. Pincus | Managing Member
Pincus Law LLC
90 Broad Street, 23rd Floor
New York, NY 10004

t: (212) 962-2900 | f: (347) 803-1789
mark@pincus-law.com

From: Gabriela Galindo <Gabriela@servingbyirving.com>
Sent: Saturday, March 23, 2019 11:50 AM
To: Mark S. Pincus <mark@pincus-law.com>
Cc: info <info@servingbyirving.com>; Catherine Kim <CKim@durietangri.com>
Subject: Re: Service for Facebook in Sullivan County

Can we substitute service if he's not home or do you need in hand personal service only? I assume if no one is there we can keep trying - correct?

Gabriela Galindo
Serving By Irving Inc.
Tel. (212) 233-3346

From: Mark S. Pincus <mark@pincus-law.com>
Sent: Saturday, March 23, 2019 11:26 AM
To: Gabriela Galindo
Cc: info; Catherine Kim
Subject: RE: Service for Facebook in Sullivan County

This is acceptable. Thank you.

Mark S. Pincus | Managing Member
Pincus Law LLC
90 Broad Street, 23rd Floor
New York, NY 10004
t: (212) 962-2900 | f: (347) 803-1789
mark@pincus-law.com

From: Gabriela Galindo <Gabriela@servingbyirving.com>
Sent: Saturday, March 23, 2019 11:13 AM
To: Mark S. Pincus <mark@pincus-law.com>
Cc: info <info@servingbyirving.com>
Subject: Re: Service for Facebook in Sullivan County

I am waiting for my server to get back to me. This could be a summer home. Our fee to serve this/attempt this today would be \$850.00 minimum + subpoena fee which I haven't calculated yet + any travel time and waiting time involved.

Please let me know ASAP if these fees are acceptable and I will provide you with a credit card authorization form Monday morning.

Gabriela Galindo
Serving by Irving, Inc.

On Mar 23, 2019, at 11:03 AM, Mark S. Pincus <mark@pincus-law.com> wrote:

Good speaking with you before. I attach the subpoena we seek to serve on Thomas Scaramellino at 2674 State Route 42, Forestburgh, New York 12777. Thank you for your attention to this short-notice request.

Best,

Mark

Mark S. Pincus | Managing Member
Pincus Law LLC
90 Broad Street, 23rd Floor
New York, NY 10004
t: (212) 962-2900 | f: (347) 803-1789
mark@pincus-law.com

<2019.03.21 FINAL NY Subpoena to Scaramellino.pdf>

C

EXHIBIT 10

[REDACTED]

From: Gabriela Galindo <Gabriela@servingbyirving.com>
Sent: Saturday, March 23, 2019 3:49 PM
To: Catherine Kim
Cc: Mark S. Pincus; info
Subject: Re: Service for Facebook in Sullivan County

We are back at the house and there is no activity, no cars, no sign that anyone has been there.

Please advise if you would like us back there on Monday.

Gabriela Galindo
Serving by Irving, Inc.

On Mar 23, 2019, at 4:04 PM, Gabriela Galindo <Gabriela@servingbyirving.com> wrote:

Will do.
See below
<image1.jpeg>

If you google the address on Douglas Elliman site you can see the house. The complex is the Merriworld.
We could not tell who lives here.

Gabriela Galindo
Serving by Irving, Inc.

On Mar 23, 2019, at 3:25 PM, Catherine Kim <CKim@durietangri.com> wrote:

Hi Gabriela - thanks for the update. If the server can try again today, that would be great.

When you say you ran a search, did the search result say that this was Mr. Scaramellino's address? If you could send me a copy of the search result (e.g. a pdf or screenshot) that would be great. Thanks!

Best,
Cat

From: Gabriela Galindo <Gabriela@servingbyirving.com>
Sent: Saturday, March 23, 2019 11:47 AM
To: Catherine Kim
Cc: Mark S. Pincus; info
Subject: Re: Service for Facebook in Sullivan County

We attempted service. This address is general address for the complex. I ran a search for him, the address we found is within this complex. The complex is basically empty. There are no vehicles. Our server could hardly get into this place

due to the accumulated mud. The locations in the area are summer vacation homes. People do not really come up this way during the winter.

Please advise if you wish us to try back at a later time today or on Monday morning.

Gabriela Galindo
Serving by Irving, Inc.

On Mar 23, 2019, at 12:24 PM, Gabriela Galindo
<Gabriela@servingbyirving.com> wrote:

Understood.

Gabriela Galindo
Serving by Irving, Inc.

On Mar 23, 2019, at 11:55 AM, Catherine Kim
<CKim@durietangri.com> wrote:

Hi Mark – confirmed, we have to serve him personally.

Thanks,
Cat

From: Mark S. Pincus <mark@pincus-law.com>
Sent: Saturday, March 23, 2019 8:54 AM
To: Gabriela Galindo <Gabriela@servingbyirving.com>
Cc: info <info@servingbyirving.com>; Catherine Kim
<CKim@durietangri.com>
Subject: RE: Service for Facebook in Sullivan County

I believe this is not Mr. Scaramellino's "actual place of business, dwelling place, or usual place of abode," so substituted service would not be sufficient. I have cc'ed Catherine Kim, Facebook's counsel in California.

Catherine, please confirm that, to your knowledge, this address is neither Mr. Scaramellino's "actual place of business, dwelling place, or usual place of abode." If it is not, we have to serve him personally and cannot just leave it with the person who answers the door.

Mark S. Pincus | Managing Member
Pincus Law LLC
90 Broad Street, 23rd Floor
New York, NY 10004
t: (212) 962-2900 | f: (347) 803-1789
mark@pincus-law.com

From: Gabriela Galindo
<Gabriela@servingbyirving.com>
Sent: Saturday, March 23, 2019 11:50 AM
To: Mark S. Pincus <mark@pincus-law.com>
Cc: info <info@servingbyirving.com>; Catherine Kim
<CKim@durietangri.com>
Subject: Re: Service for Facebook in Sullivan County

Can we substitute service if he's not home or do you need in hand personal service only? I assume if no one is there we can keep trying - correct?

Gabriela Galindo
Serving By Irving Inc.
Tel. (212) 233-3346

From: Mark S. Pincus <mark@pincus-law.com>
Sent: Saturday, March 23, 2019 11:26 AM
To: Gabriela Galindo
Cc: info; Catherine Kim
Subject: RE: Service for Facebook in Sullivan County

This is acceptable. Thank you.

Mark S. Pincus | Managing Member
Pincus Law LLC
90 Broad Street, 23rd Floor
New York, NY 10004
t: (212) 962-2900 | f: (347) 803-1789
mark@pincus-law.com

From: Gabriela Galindo
<Gabriela@servingbyirving.com>
Sent: Saturday, March 23, 2019 11:13 AM
To: Mark S. Pincus <mark@pincus-law.com>
Cc: info <info@servingbyirving.com>
Subject: Re: Service for Facebook in Sullivan County

I am waiting for my server to get back to me. This could be a summer home. Our fee to serve this/attempt this today would be \$850.00 minimum + subpoena fee which I haven't calculated yet + any travel time and waiting time involved.

Please let me know ASAP if these fees are acceptable and I will provide you with a credit card authorization form Monday morning.

Gabriela Galindo
Serving by Irving, Inc.

On Mar 23, 2019, at 11:03 AM, Mark S. Pincus
<mark@pincus-law.com> wrote:

Good speaking with you before. I
attach the subpoena we seek to serve
on Thomas Scaramellino at 2674 State
Route 42, Forestburgh, New York
12777. Thank you for your attention to
this short-notice request.

Best,

Mark

Mark S. Pincus | Managing Member
Pincus Law LLC
90 Broad Street, 23rd Floor
New York, NY 10004
t: (212) 962-2900 | f: (347) 803-1789
mark@pincus-law.com

<2019.03.21 FINAL NY Subpoena to
Scaramellino.pdf>

EXHIBIT 11

COMPUTERLAW GROUP LLP

ATTORNEYS AT LAW
401 FLORENCE STREET
PALO ALTO, CALIFORNIA 94301
COMPUTERLAW.COM

TELEPHONE
(650) 327-9800

FAX
(650) 618-1863

April 5, 2019

Via Email

Catherine Kim, Esq.
Durie Tangri LLP
217 Leidesdorff Street
San Francisco, CA 94111
ckim@durietangri.com

Re: Six4Three, LLC v. Facebook, Inc. et al.
San Mateo Super. Ct. Case No. CIV 533328

Dear Ms. Kim:

We are in receipt of your letter dated April 3, 2019. Why is there is no respect for Judge Swope's ruling that rejected your contention that we provide yet further address details for Mr. Scaramellino or that we accept service on his behalf? The answer cannot be harassment but we frankly see no other explanation. Is there one? Keep in mind in answering truthfully that this is your fifth assertion that we are under a duty that the Court has overruled you on.

As the Court recently observed, Facebook has not cited to any legal authority to support your request. Your most recent request is again devoid of authority. The Court noted in Case Management Order no. 21: "A point which is merely suggested by a party's counsel, with no supporting argument or authority, is deemed to be without foundation and requires no discussion." Case Management Order No. 21 at 1:21-22. This is ignored in your most recent letter. Why?

The same is true as to your request that we accept service of a subpoena in California for a witness who lives and works in New York. What authority exists for that? We see none other than Judge Swope's ruling against your position. Additionally, Mr. Scaramellino is entitled to choose legal counsel in New York. You seem to recognize this given that you included New York addresses for both the Document Repository Location and Deposition Location in your "Notice of Deposition to Thomas Scaramellino" dated March 21, 2019. Due to an overzealous approach, it is likely that Mr. Scaramellino will be engaging local New York counsel to address all issues including appropriate sanctions; we ask that you cease the harassment immediately. If you continue, we will be forced to raise these issues with Judge Swope.

Very truly yours,



Jack Russo

cc: Counsel of Record via Email

Enclosure

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1 "grant[ed] Facebook leave to serve its requests for production or subpoena duces tecum, whichever
2 is the appropriate method, on . . . Mr. Scaramellino." (Order, issued Mar. 15, 2019, p. 13:12-14
3 ("March 15 Order"). See Russo Dec. ISO Scaramellino Opp., filed Mar. 25, 2019, Ex. 6.)

4 **2. Six4Three's Counsel's Ex Parte Application to Supplement Motions**

5 Six4Three counsel Birnbaum & Godkin, LLP and Gross & Klein, LLP's (collectively
6 "Six4Three's counsel") Ex Parte Application Requesting Leave to Supplement the Motions to be
7 Relieved as Counsel With Previously Unavailable Information, filed March 25, 2019, ("Ex Parte to
8 Supplement") is DENIED.

9 Six4Three's counsel has not sufficiently demonstrated that "supplement[ing] the points and
10 authorities and materials upon which the motion was made" is proper while under submission. (Ex
11 Parte to Supplement, *supra*, at p. 2:8-9. See *id.* at p. 4:11 – 5:10) First, California Rules of Court,
12 Article III, addresses "Briefs in the Court of Appeal," and not the trial court. Second, California
13 Rules of Court, rule 8.254 also applies to the Court of Appeal, not the trial court, and moreover
14 pertains to "significant new authority" and not "new information that only came into existence on
15 March 20, 2019." (*Id.* at p. 2:9-10. See also Leveroni Dec. ISO Ex Parte to Supplement, filed Mar.
16 25, 2019, ¶ 4.) Third, seeking relief under Code of Civil Procedure section 1008 is premature, as
17 the Court has made no ruling. Fourth, Six4Three's counsel has not demonstrated that relief is
18 warranted pursuant to Code of Civil Procedure section 128, subdivision (a)(8), and California Rules
19 of Court, rule 2.900(b), based on its assertion that "the critical new information regarding the central
20 issue in Birnbaum & Godkin, LLP's motion to be relieved as counsel only came into existence on
21 March 20, 2019, over one week after the Court took the matter under submission." (Ex Parte to
22 Supplement, *supra*, at p. 5:2-4.)

23 **3. Six4Three's Counsel's Ex Parte Application to Stay Discovery**

24 Six4Three counsel's Ex Parte Application to Stay Discovery, filed March 27, 2019 ("Ex
25 Parte to Stay") is DENIED.

26 Six4Three's counsel has not filed a petition for writ of mandate challenging the March 15
27 Order, but "intends to file a writ." (Ex Parte to Stay, *supra*, at p. 3:16-17. See *id.* at p. 7:16-17.)
28 Accordingly, there is no emergency as the basis for relief is premature. Furthermore, Six4Three's

1 counsel may seek a stay concurrently with the filing of its petition with the Court of Appeal. (Cal.
2 Rules of Court, rule 8.486(a)(7).)

3 Six4Three's counsel asserts that it "now has interests in the underlying matter that *may be at*
4 *odds* with the interests of its client, [Six4Three]." (Ex Parte to Stay, *supra*, at p. 2:26-27 (emphasis
5 added).) A possibility of a conflict does not implicate mandatory withdrawal pursuant to Rules of
6 Professional Conduct, rule 1.16(a). Six4Three's counsel has repeatedly asserted without articulating
7 how allegations of misconduct creates an unwaivable conflict between Six4Three and its counsel
8 under this rule. (*Id* at p. 6:17-19, 6:23-28, 7:5-8.)

9 Six4Three's counsel raises several other points that bear addressing. First, Six4Three's
10 counsel refers to "expedited discovery proceedings." (Ex Parte to Stay, *supra*, at p. 3:7-8, 7:9.) There
11 is no current order requiring the expediting of discovery. The March 15 Order opened discovery and
12 does not contemplate expediting discovery. Second, it is unclear what Six4Three's counsel intends
13 to convey in asserting, "A stay of discovery prevents [Six4Three's counsel] from further advisement
14 or representation of [Six4Three]." (*Id.* at p. 5:7-8.) Third, in filing this application, personal counsel,
15 for Six4Three's counsel are not only seeking affirmative relief on behalf their clients, but also
16 Six4Three, whom they do not represent. (See *id.* at p. 2:5-8, 3:25-26.)


17 Fourth, Six4Three is not effectively proceeding in *propria persona*. (Ex Parte to Stay, *supra*,
18 at p. 3:10-11, 7:8-10.) The decision of Six4Three's counsel to stop representing Six4Three pending
19 their motions to be relieved as counsel under submission is not relevant to this ex parte application.
20 "Attorneys do *not* have an absolute right to withdraw from representation at any time with or without
21 cause." (Tuft, Cal. Prac. Guide: Prof. Resp. (Rutter, Dec. 2018 Update) ¶ 10:21 (original emphasis).)

22 Fifth, Six4Three's counsel have continued to take actions inconsistent with its assertion that
23 they are "legally and ethically barred from advising or representing SIX4THREE *under any*
24 *circumstances . . .*" (Ex Parte to Stay, *supra*, at p. 3:3-4 (emphasis added).) One day prior to filing
25 the instant ex parte application, on March 26, 2019, Six4Three's counsel filed the Civil Case
26 Information Statement on behalf of Six4Three in its appeal *Six4Three, LLC v. Facebook, Inc.* (First
27 App. Dist. case no. A156095). Notably, Six4Three is represented by separate counsel in its appeal,
28 *Six4Three, LLC v. Facebook, Inc.* (First App. Dist. case no. A155334) and in response to Facebook's

1 appeal, *Six4Three, LLC v. Facebook, Inc.* (First. App. Dist. case no. A154890). The docket of each
2 of these appeals is judicially noticeable. (Evid. Code. § 452(d).) Six4Three's counsel cannot
3 selectively pursue the matters it chooses to represent Six4Three.

4
5 IT IS SO ORDERED.

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7 DATED: April 2, 2019

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10 Honorable V. Raymond Swope
11 Judge of the Superior Court
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